

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Armed Forces Bank, N.A.,

Plaintiff

v.

DFA, LLC, et al.,

Defendants

Case No.: 2:13-cv-1996-JAD-CWH

**Order Granting in Part Emergency
Motion to Stay Enforcement of
Judgment**
[#81]

Armed Forces Bank commenced this action for breach of three loan agreements executed by defendant DFA, LLC, and the personal guaranties executed by defendant Don F. Ahern to ensure the repayment of those loans. On May 19, 2015, after a summary judgment hearing, the court entered summary judgment in favor of plaintiff Armed Forces Bank and against the defendants on all aspects of this case except the amount of Mr. Ahern's guarantor liability for the June 29, 2007, Loan Agreement ("Nevada Loan") and the August 1, 2007, Loan Agreement ("California Loan"). The court directed the clerk to enter judgment on the resolved items, and judgment was entered on May 19, 2015. Docs. 77, 78. The court then set a bench trial on the fair market value of the California and Nevada properties for September 28, 2015, and ordered the parties to a settlement conference before a magistrate judge. Doc. 77. That settlement conference is scheduled for July 21, 2015. Doc. 79.

On May 29, 2015, the defendants filed an emergency motion to amend or correct the judgment. Doc. 81. They recount that a dispute over the finality of the judgment has arisen: the bank believes the court entered final judgment as to the resolved portions and intends to begin enforcement proceedings; the defendants believe that the court intended its order to be merely interlocutory and, if not, they ask the court to amend the judgment to make it interlocutory and not final or stay enforcement.

1 **A. The order was intended to be final for the resolved claims and terminated parties.**

2 The judgment was intended to be final. It contains the magic language required by Rule
 3 54(b) of the Federal Rules of Civil Procedure to direct the entry of a final judgment as to one or
 4 more—but fewer than all—claims or parties. *See* Doc. 77 at 1 (“with good cause appearing and no
 5 reason for delay . . . The Clerk of Court shall enter judgment accordingly”); *see also* Fed. R. Civ. P.
 6 54(b) (permitting the court to direct final judgment on a claim or party “if the court expressly
 7 determines that there is no just reason for delay”). The order resolves all claims and issues against
 8 defendant DFA, LLC, leaving nothing to be adjudicated against this defendant. It leaves unresolved
 9 only *the amount of Ahern’s liability* as guarantor of the California and Nevada loans. Thus, it was
 10 intended to be final against Ahern with respect to the Arizona loan.

11 Although not expressly stated on the record, the court scrutinized the considerations required
 12 by the United States Supreme Court in *Curtiss-Wright Corp. v. General Electric Co.*¹ before
 13 directing entry of final judgment. The matter involves separate loan and guaranty obligations, and
 14 Mr. Ahern’s liability on the guaranty is distinct from and governed by different legal principles than
 15 DFA’s liability under the loans. Thus, the court concluded that the relevant judicial concerns were
 16 met and that there was no reason to delay the finality of those resolved portions of this case. *Curtiss-*
 17 *Wright* requires a court to also consider “equitable principles such as prejudice and delay.”² The
 18 court considered these equities before directing entry of the partial judgment here. Key to the court’s
 19 Rule 54(b) determination was that this case involves notes and guaranties executed in 2008 and 2009
 20 and that have been in default since 2012, accruing significant interest. *See* Doc. 1. The age and
 21 amounts of these obligations justified the entry of final judgment on the resolved sums. Accordingly,
 22 the court concluded that the judgment should be entered as final in these regards.

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 26 ¹ *Curtiss-Wright Corp. v. General Electric Co.*, 446 U.S. 1, 10 (1980); *Gregorian v. Izvestia*, 871
 27 F.2d 1515, 1519 (9th Cir. 1989).

28 ² *Gregorian*, 871 F.2d at 1519.

B. Enforcement will be temporarily stayed under Rule 62(h).

But the court did not merely direct entry of judgment, it ordered the parties to a settlement conference before a magistrate judge. That conference is set for July 21, 2015, just two months before the final, bench-trial phase of what little remains of this case. *See* Doc. 77, 79. Even though the now-resolved claims present distinct legal issues that justify the entry of final judgment under Rule 54(b), the economy of permitting the parties to collectively participate in the July 21, 2015, settlement conference also militates in favor of a stay of enforcement under Rule 62(h).

Rule 62(h) permits a court to “stay the enforcement of a final judgment entered under Rule 54(b) until it enters a later judgment or judgments, and may prescribe terms necessary to secure the benefit of the stayed judgment for the party in whose favor it was entered.” Because the court’s intention was for all parties to participate in good faith in the July 21, 2015, settlement conference without the distraction of a pending appeal or without the risk that this court may lose jurisdiction over a party or claim, and because the court finds that any delay in the plaintiff’s ability to enforce the judgment will be minimal and is outweighed by the public policy favoring the mutual settlement of claims, the court finds good cause for a brief stay of enforcement under FRCP 62(h). The judgment (Doc. 78) and its enforcement will be stayed until the end of the tenth day following the settlement conference without the need to post a bond or other security. The court finds that the plaintiff’s financial interests during this brief stay will be adequately protected by the accruing interest.

Accordingly, IT IS HEREBY ORDERED THAT Defendants’ Emergency Motion to Alter or Amend Judgment or for Stay (Doc. 81) is **GRANTED in part and DENIED in part**:

- **The judgment (entered 5/19/15) and its enforcement is STAYED until the expiration of the tenth calendar day following the completion of the settlement conference; and**
- The motion is denied in all other respects.

DATED: June 1, 2015.


 Jennifer A. Dorsey
 United States District Judge